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IN THE
SUPREME COURT OF THE UNITED STATES

No. 72-1129

SUSAN COHEN,
Petitioner-Plaintiff,

vs.

CHESTERFIELD COUNTY SCHOOL BOARD,
Respondent-Defendant.

On Review from the United States Court
of Appeals for the Fourth Circuit.

MOTION

**For Leave to File an Amicus Curiae Brief on
Behalf of Respondent-Defendant**

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COMES NOW, DELTA AIR LINES, INC., through and by its attorney, Dean Booth, and pursuant to Rule 42 of the Supreme Court of the United States, hereby respectfully requests the Court grant leave to file an *amicus curiae* brief on behalf of Chesterfield County School Board, Respondent-Defendant.

Delta Air Lines, Inc. is presently a party-defendant in a Title VII maternity leave sex discrimination action in the United States District Court for the Northern District of Georgia, in Atlanta, captioned **Newmon v. Delta Air Lines, Inc.**, Civil No. 15681 a case which raises a series of important questions about employer maternity leave policies, several of which are identical to those presented in the **Cohen v. Chesterfield County School Board** case. While

Delta Air Lines, Inc. recognizes that **Cohen**, is not a Title VII case, it believes that the major social, medical and economic issues involved in the case are practically the same as those in **Newmon** and it is certain that the outcome of this Court's decision in **Cohen** and its companion case, **Cleveland Board of Education v. La Fleur**, No. 72-777, will strongly influence, if not determine, the future disposition of many of the same questions being raised in Title VII cases. Since this Court's decision will very probably have a significant impact on the maternity leave policies of employers **other than** school boards, especially corporate employers that employ large numbers of women, it is in the public interest that Delta Air Lines, Inc. present its views to the Court on the following issues which it believes may not adequately be presented by the parties:

(1) Whether company regulations which establish mandatory cutoff dates for the commencement of maternity leave are necessary to ensure the efficient functioning of the Employer's business.

(2) Whether the time at which an Employer may permissibly require maternity leave to begin should be allowed to vary from company to company according to factors such as the kind of business the Employer is engaged in, and the different kinds of work required to be performed by the Employer. In the **Newmon** case, Delta required pregnant female employees to go on maternity leave after the fifth month of pregnancy, just as the Chesterfield County School Board did in **Cohen**; Delta believes the underlying justification for its rule is as compelling if not more so, for different reasons, than the rule being challenged in **Cohen**.

(3) Whether or not pregnancy should be viewed as natural condition of the body instead of as an illness, as some proponents of Mrs. Cohen's position are attempting to advance.

(4) Whether pregnancy is voluntary, and if so, whether it is then invalid to compare it to other physical conditions which result from involuntary causes.

(5) Whether the Equal Employment Opportunity Commission's Guidelines on Sex Discrimination, 29 CFR, § 1604 (April 5, 1972), should be entitled to great deference when these interpretations were promulgated without references to any supportive medical or economic data, and without any of the procedural safeguards guaranteed by the concept of Due Process of Law.

Thus, before the Supreme Court fashions a new rule with regard to one particular type of employer (a school board), Delta asks that it be granted permission to present this Court with facts which will demonstrate the different effects of maternity leave policies on other employers, depending on the nature of the business they are engaged in.

Requests for consent to file an *amicus curiae* brief were sent to each party. Copies are attached hereto and made a part thereof. Counsel for Chesterfield County School Board consented by letter dated June 11, 1973, whereas counsel for Susan Cohen orally refused consent on June 22, 1973.

.....
DEAN BOOTH

Attorney for Amicus Curiae,
Delta Air Lines, Inc.

.....
RICHARD S. MAURER

.....
SIDNEY F. DAVIS

Attorneys for Delta Air Lines, Inc., Amicus
Curiae on Behalf of Respondent-Defendant
Chesterfield County School Board



APPENDIX

APPENDIX A

June 8, 1973

Samuel Hixon, III, Esquire
Williams, Mullen & Christian
510 United Virginia Bank Building
Richmond, Virginia 23219

Re: **Cohen v. Chesterfield County School Board**, —
F.2d —, 5 EPD 8419 (4th Cir. 1973), **cert. granted**
41 USLW 3565 (April 24, 1973).

Dear Mr. Hixon:

In accordance with our telephone conversation of one week ago, Delta Air Lines Inc. hereby respectfully requests pursuant to Rule 42 of the Supreme Court of the United States, that you consent to the filing of a brief *amicus curiae* in the above referenced case, now pending before the United States Supreme Court.

Delta Air Lines, Inc. is presently a party-defendant in an important Title VII maternity leave sex discrimination case scheduled for trial in the United States District Court for the Northern District of Georgia, in Atlanta beginning June 25, 1973. The case, **Newmon v. Delta Air Lines, Inc.** presents a number of issues concerning interpretation and application of § 703 of Title VII of the Civil Rights Act of 1964 with regard to employer maternity leave policies. While it is understood **Cohen** is not a Title VII case, it is felt that the major social, economic and medical issues involved in the cases are virtually identical, regardless whether the origin of the action lies in the Constitution or Title VII, and Delta is certain that the outcome of the Supreme Court's decision in **Cohen** will

strongly influence, if not preclude, the similar issues in pending Title VII cases, such as **Newmon**. I am therefore enclosing a copy of our recent brief submitted in support of a Motion for Summary Judgment filed in the District Court here in Atlanta on April 18, 1973, in the **Newmon** case, and hereby offer Delta's assistance in any other aspect of your case as it is prepared for hearing before the Supreme Court.

The Supreme Court Rules state that the filing date for *amicus* briefs is the same deadline as the one for the party on whose behalf the brief is submitted. During our conversation the other day, you indicated that date is about August 5th for Chesterfield County School Board. Could you please confirm the applicable deadline in your reply?


Cordially yours,

Robert N. Meals, Jr.

Attorney for Delta Air Lines, Inc.

RNMjr/ep

Enclosure



APPENDIX B

June 8, 1973

Philip J. Hirschkop, Esquire
108 North Columbus
P. O. Box 234
Alexandria, Virginia 22313

Re: *Cohen v. Chesterfield County School Board*,
— F.2d —, 5 EPD 8419 (4th Cir. 1973), **cert.**
granted 41 USLW 3565 (April 24, 1973).

Dear Mr. Hirschkop:

Pursuant to Rule 42 of the Supreme Court of the United States, Delta Air Lines, Inc. hereby respectfully requests that you consent to the filing of a brief *amicus curiae* in the above-referenced case, now pending before the United States Supreme Court.

Delta Air Lines, Inc. is presently a party-defendant in a Title VII sex discrimination action in the United States District Court for the Northern District of Georgia, in Atlanta, captioned **Newmon v. Delta Air Lines, Inc.**, Civil No. 15681, a case which raises virtually identical issues about employer maternity leave policies as those presented in **Cohen**. While Delta recognizes that **Cohen** is not a Title VII case, it feels that the major social, economic and medical issues involved in the case are practically the same as those in **Newmon**, and it is certain that the outcome of the Supreme Court's decision in **Cohen** will strongly influence, if not determine, the future disposition of the same questions in Title VII cases. Since the Supreme Court's de-

cision may have a significant impact on the maternity leave policies of companies that employ large numbers of women, it is in the public interest that Delta Air Lines, Inc. present its views to the Court.

Cordially yours

Robert N. Meals, Jr.

Attorney for Delta Air Lines, Inc.

RNMjr/ep

